

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

RYAN YOUNG,
also known as “Richard Cullen,”

Defendant.

**PACNET SERVICES, LTD.,
CHEXX (AMERICAS) INC., and
ACCU-RATE CORP.**

Petitioners.

18-CR-46 (JMA)

Judge Joan M. Azrack

**PETITIONERS’ SUPPLEMENT TO VERIFIED PETITION FOR ANCILLARY
PROCEEDINGS TO ADJUDICATE INTEREST PURSUANT TO 21 U.S.C. § 853(n)**

PacNet Services, Ltd. (“PacNet Services”), Chexx (Americas) Inc. (“Chexx”), and Accu-Rate Corporation (“Accu-Rate”) (collectively, “PacNet,” “PacNet Group,” or “Petitioners”), by and through counsel, hereby supplement their Ancillary Petition to Adjudicate Interest Pursuant to 21 U.S.C. § 853(n) (Dkt. No. 17, “Petition”).

I. INTRODUCTION

On December 18, 2020, the Government filed a Bill of Particulars stating that it is seeking forfeiture of the following property (“the Truist Bank funds”) via the criminal proceeding of Defendant Young:

Approximately three hundred thirty-three thousand eight hundred seventeen dollars and five cents (\$333,817.05) in United States currency, seized from Truist Bank account number 0000147703996, and all proceeds traceable thereto.

(Dkt. 24).¹ Because the Truist Bank funds are the property of Petitioner Chexx, and—as is the case of Petitioners’ other accounts subject to the Petition—the government has no legal basis to forfeit the Truist Bank funds, immediate return of the Truist Bank funds to Petitioner Chexx is appropriate. Although the government has no legal basis to have forfeited any of the funds subject to the Petition, forfeiture of the Truist bank funds is particularly inappropriate because, as discussed in the Petition and further herein, Chexx was never involved in the business of inbound check processing.

Although Petitioners incorporate their Petition by reference in its entirety, Petitioners briefly set forth Chexx’s interest in the Truist Bank funds to demonstrate why the immediate return of those funds is appropriate.

II. BACKGROUND AND ARGUMENT

Chexx asserts its rights in \$333,817.05 in funds that USPIS seized from Truist Bank Account No. 0000147703996, held in the name of The Payments Factory LLC, on or about July 10, 2020. According to the USPIS’ Notice of Seizure, the funds were seized by the USPIS at Lumberton, North Carolina.

As discussed in the Petition, Chexx, is one of the companies that comprised the PacNet Group. However, Chexx was not involved in the business of inbound check processing. (Petition at 6-7.) Rather, Chexx has a separate corporate existence and operated a different line of business. Chexx’s principal client base *inter alia* consisted of market research companies that conduct worldwide market research surveys and affiliate marketing programs. Participants in market research surveys earn a small reward, and responsibility for the outbound payment of that reward

¹ The Government likewise filed a bill of particulars identifying the same funds in the criminal proceeding of Ercan Barka, a criminal defendant whose matter is likewise proceeding before this Court. *See United States v. Barka*, No. 2:18-cr-00031-JMA (E.D.N.Y. filed Mar. 26, 2018), Dkt. 40.

was outsourced to Chexx pursuant to its arrangements with the companies for which it acted. Some of Chexx's clients included Comscore, AC Nielsen, and Decision Analyst, which conduct surveys for companies such as American Airlines and Proctor & Gamble. Affiliate marketing is related to internet sales leads and the earning of commissions for finding and referral of customers.

Chexx's predecessor in interest, The Payments Factory LLC, opened an account at Branch Banking & Trust (formerly "BB&T," now known as Truist) at its branch located at 200 W Forsyth St, Jacksonville, FL 32202 (the "Account"). The Payments Factory LLC was dissolved by merger on December 31, 2013. The State of Florida's corporate records recognize the corporate merger as of February 6, 2014. Attached hereto as Exhibit 1 is a letter—with attachments—which was submitted to the Federal Reserve and Truist Bank on or about March 3, 2020, explaining the merger of The Payments Factory LLC into Chexx.

Chexx was among the entities unlawfully designated by the Treasury's Office of Foreign Assets Control ("OFAC") as a transnational criminal organization ("TCO") on September 22, 2016. (*See* Petition at 8-10.) Ultimately, like the other PacNet Group entities and its employees, Chexx was removed from OFAC's Specially Designated Nationals and Blocked Persons list (the "SDN List"). (*See* Petition at 10-13.) As part of the delisting process, the PacNet Group and OFAC signed a final agreement providing for the removal from the SDN List of the PacNet Group, its subsidiary companies, and the three remaining individuals on the condition that PacNet as a disinterested stakeholder place into an interpleader account funds owed by the PacNet Group to former clients identified by OFAC (the "September 19, 2017 Agreement"). Pursuant to the September 19, 2017 Agreement, OFAC identified on October 6, 2017, funds owed to former clients of the PacNet Group that OFAC specifically represented in writing it had "a reasonable factual basis to believe . . . involve[] the proceeds of fraud or money laundering allegedly

committed by a client of the PacNet Group.” **Chexx, as discussed above, made outbound check payments and had no involvement with PacNet’s inbound direct mail check processing operations.** (*See also* Petition at 29.) Thus, although Petitioners have not been able to review the affidavit submitted by the postal inspector in support of the warrant that was issued that lead to the seizure of the Trust Bank funds, it is a certainty that such an affidavit would not be able to lay an accurate factual predicate linking any alleged criminal conduct to the Truist Bank funds. This account was primarily used to make outbound payments on behalf of companies in the affiliate marketing business, and no money seized from the account was sent to the account by or on behalf of Young, nor was the account used for the deposit of any consumer funds, and it was likewise not used to make any payment on behalf of Young. In other words, having a mind to how the Truist Bank account was funded and deployed, Young had no interest in the contents of the Chexx bank account at Truist. If the affidavit in support of the seizure states otherwise, there are serious concerns as to the veracity and good faith of the affiant.

Since being removed from the SDN List, Chexx repeatedly sought the release of its funds from Truist. The Account balance was \$303,677.41 as of September 22, 2016, and was stated to be \$333,817.05 at the time the Truist bank funds were seized by the Government on or about July 10, 2020. Prior to the Government’s seizure, Truist refused to release Chexx’s funds, providing excuses for delaying the release of funds and making unsupportable allegations that it could not identify whether Chexx was the lawful holder of the Account. The original authorized signatory for the Truist account, Maria Rojas, contacted Truist multiple times to request release of the funds held by the bank. Among other things, Truist requested verification that Chexx was the successor to the Payments Factory. In response, Chexx provided evidence, in the form of publicly filed corporate filings, showing that Chexx was the successor to The Payments Factory LLC, including

the attachments to the letter attached as Exhibit 1. On or about March 3, 2020, Chexx provided copies of the merger documentation to Truist, the state corporate records showing the merger, her appointment as a director of Chexx, and other information. *See* Exhibit 1. Nonetheless, Truist refused to release the funds. In September 2020, Chexx received notification that the funds had been seized by the United States Postal Inspection Service (“USPIS”) in July 2020, in the latest of the Government’s unlawful seizures of the PacNet Group’s funds, which dates to 2017. On September 23, 2020, Chexx filed a claim contesting this forfeiture. *See* Exhibit 2.

All of the Government’s seizures—including the USPIS’ seizure of \$333,817.05 from Truist Bank Account No. 0000147703996, held in the name of The Payments Factory LLC—violated the Government’s agreement with PacNet. As set forth in detail in the Petition, PacNet operated for more than 20 years as a regulated, law-abiding business. The funds seized from the PacNet Group’s accounts that have been seized by the government—including this most recent wrongful seizure of the Truist Bank funds—are necessary to pay the PacNet Group’s arms-length customers.

Pursuant to the Ancillary Petition filed by Petitioners in this matter, Chexx therefore contests the forfeiture of the Truist Bank funds as inappropriate for the identical reasons asserted in the Petition. As discussed herein and in the Petition (*see* Petition at 6-7, 29), Chexx—the lawful owner of the Truist account—was not involved in the PacNet Group’s inbound direct mail operations in any way, and none of the customers identified by OFAC were customers of Chexx. Thus, although all of the funds identified in the Petition have been improperly seized by the Government, the seizure and attempted forfeiture of the Truist Bank funds by the Government is especially inappropriate and underscores the extent of the Government’s wrongful activity as it relates to the PacNet Group, given that the Government has not made and cannot make any

showing that Chexx's activities had any relationship to the criminal activities in which Defendant Young allegedly engaged.

III. CONCLUSION

In addition to the relief sought in the Petition, Petitioners respectfully request that the Court enter an order returning the Truist Bank funds to Chexx.

Dated: January 11, 2021

/s/ Jeff Ifrah

A. Jeff Ifrah

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CERTIFICATE OF SERVICE

I hereby certify that, on January 11, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Christopher Charles Caffarone
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610 Federal Plaza
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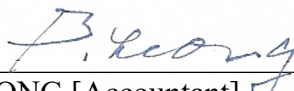
I further certify that, as required by the Notice of Forfeiture, a copy of this document will be transmitted by United States mail to the following:

Tanisha Payne
271 Cadman Plaza East
7th Floor
Brooklyn, NY 11201

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing Supplement is true and correct.

Executed this 8th day of January 2021



BILL LEONG [Accountant]
[On behalf of PacNet Services, Chexx, and Accu-Rate]